HONOURABLE SRI JUSTICE J.CHELAMESWAR
AND
HONOURABLE SRI JUSTICE D.APPARAO

WRIT PETITION No. 15829 of 2006

Dated: 13-09-2006

Between:

S. Sultan s/o Merasa, aged about 52 years, R/o 1046-99, Kacherimitta, Kavali, Nellore District.

…Petitioner

and

1. The Collector and District Magistrate, Nellore,
2. The Chief Secretary, Government of A.P. G.A.D. Secretariat, Hyderabad,
3. The Superintendent, Central Prison, Nellore.

…Respondents

HONOURABLE SRI JUSTICE J.CHELAMESWAR
AND
HONOURABLE SRI JUSTICE D.APPARAO

WRIT PETITION No. 15829 of 2006

O R D E R (Per Hon'ble Sri Justice D.Apparao)

Sri Pralayakaveri Bhaskar was ordered to be detained by the 1st respondent-District Collector and District Magistrate, Nellore, in Rc. C1 (M) 372/2006, dated 20-03-2006, under Section 3(1), 3(2) read with Section 2(a) & (g) of A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short 'the Act').

2. The petitioner, the friend of Bhaskar, challenges the validity of the order of the 1st respondent, as illegal, arbitrary, unconstitutional and violative of Article 22 of the Constitution of India and seeks a declaration that the order is bad in law and prays that the detenu to be released forthwith by granting a writ of habeas corpus.

3. The grounds of detention are based on the fact that the detenu was involved in various crimes registered under various provisions of Indian Penal Code and Explosive Substances Act, and he was involved in serious criminal activities resulting in serious public disorder.

On 28-12-2003 at about 2.00 AM the detenu along with 22 others belonging to one of the groups in the village formed into unlawful assembly, trespassed into the houses of rival party, beat six persons with deadly weapons causing bleeding injuries. A case in

Crime No. 154/03 under Section 147, 148, 452, 324, 379, 109 r/w 149 IPC was registered in Kavali Rural Police Station. He was arrested and sent for remand. A charge sheet was filed in C.C. No. 365 of 2004 on the file of Addl. Judicial First Class Magistrate, Kavali and is pending trial.

Again on 28-04-2004 at 1.00 AM the detenu along with 19 others formed into an unlawful assembly with a common object and beat Pamanji Babu with hands and legs causing simple injuries. A case in Crime No. 71/2004 under Section 143, 147, 323 r/w 149 IPC was registered in Kavali Rural Police station. He was arrested on 05-05-2004 and sent for remand. Later a charge sheet was filed in C.C. No. 357 of 2004 and is pending on the file of Addl. Judicial First Class Magistrate, Kavali.

Again on 21-06-2004 at 6 AM he along with 40 others formed into an unlawful assembly armed with deadly weapons like spears, sticks and knives with an intention to get rid of Group-II people in furtherance of their common object Group-I attacked and stabbed one Pamanji Tirupati, Voila Sankaraiah and Pamanji Lakshmaiah causing multiple bleeding injuries. A case in Crime No. 88/2004 under Section 143, 147, 148, 323, 307 r/w 149 IPC was registered in Kavali Rural Police Station. He was arrested and sent for remand and case is pending for trial.

Again on 22-09-2005 at 6.30 AM the detenu along with 22 others formed into an unlawful assembly armed with deadly weapons and country made bombs and attacked one Pralayakaveri Srinu and his followers with a view to do away and threw country made bombs over them, as a result of which the said persons sustained bomb explosion. A case in cr. No. 110/2005 under Section 147, 148, 307, 324 r/w 149 IPC and Sections 3 & 5 of Explosive Substances Act was registered in Kavali Rural Police Station. He was arrested and sent for remand. The case is under investigation.

Again on 10/11-11-2005 at about 2.30 AM he along with 52 members hiring 9 criminals armed with lethal weapons like bombs, knives, axes, spears and sticks causing bleeding injuries to 10 persons and also attacked the police who were on duty. A case in Crime No. 128/2005 under Section 143, 147, 148, 307, 324, 100, 109, 120 (b) r/w 149 IPC and Sections 3 & 5 of Explosive Substances Act was registered in Kavali Rural Police Station. He was arrested and sent for remand and the case is under investigation.

Again on 10/11-11-2005 at about 2.30 AM he along with 49 members hiring 9 criminals armed with lethal weapons like bombs, knives, axes, spears and sticks causing bleeding injuries to 10 persons and also attacked the police who were on duty. A case in Crime No. 129/2005 under Section 143, 147, 148, 307, 100, 188 r/w 149 IPC and Sections 3 & 5 of Explosive Substances Act was registered in Kavali Rural Police Station. He was arrested and sent for remand and the case is under investigation.

4. Basing on the above material, the 1st respondent- Collector and District Magistrate, Nellore, having satisfied that the activities of detenu are found to be dangerous and as such he is a 'goonda' as defined under Section 2 (g) of the Act and passed the order of detention on 20-03-2006.

5. Through G.O. Rt. No. 1702, General Administration (Law & Order.II) Department, dated 28.03.2006, the Government approved the detention order. The Advisory Board had confirmed the order of detention. Based on the said recommendation of the Advisory Board, the Government confirmed the orders of detention by G.O. Rt. No. 2182, General Administration (L&O.II) Department, dated 20.04.2006 for a period of 12 months from the date of detention.

6. The detention was challenged on the ground that the 1st respondent has passed the order of detention without application of

mind. The incidents referred to do not affect the public order at all. None of the grounds come under the maintenance of public order, but they squarely fall under the law and order, there must be material to show that there was a feeling of insecurity among the general public. The detention order was passed on non-existent and irrelevant grounds and the same cannot be made a basis for satisfaction of the detaining authority on the ground that his acts are prejudicial to the maintenance of public order. The grounds are stale and remote and there was a gap of two years between the incidents.

7. The 1st respondent, District Collector, filed counter *inter alia* alleging that all the grounds were taken into consideration for assessing the criminal conduct of the detenu. Therefore, the order of detention cannot be set aside.

8. The power to issue a detention order under Section 3 of the Preventive Detention Act depends entirely upon the satisfaction of the detaining authority specified in that section. The sufficiency of the grounds upon which such satisfaction purports to be based, provided they have a rational probative value and are not extraneous to the scope or purpose of the legislative provision cannot be challenged in a court of law, except on the ground of *mala fides*. A court of law is not even competent to enquire into the truth or otherwise of the facts which are mentioned as grounds of detention in the communication to the detenu under Section 7 of the Act. In this regard, it is useful to consider the definition of the word 'goonda' under the Act.

Section 2 (g) of the Act reads as follows:-

> "gooda" means a persons, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code."

Admittedly, the ground Nos. 4, 5 and 6 relate to the offences under Section 3 & 5 of Explosive Substances Act. At the cost of repetition,

we may state that none of these grounds attract the definition of Section 2 (g) of the Act. They are not the offences punishable under Chapter XVI or Chapter XVII or Chapter XXII or XXII of the Indian Penal Code. Undoubtedly, the detaining authority had passed the orders on irrelevant grounds.

9. By a long line of decisions, it has been settled that where one of the grounds is vague or irrelevant, the entire order must be pronounced to be bad. The leading decision on this point is that of the Federal Court in **Keshav Talpade v. Emperor**[1] wherein it was stated:-

> "If a detaining authority gave four reasons for detaining a man, without distinguishing between them, and any two or three of the reasons are held to be bad, it can never be certain to what extent the bad reasons operated on the mind of the authority or whether the detention order would have been made at all if only one or two good reasons had been before them."

Where out of the two grounds given for detention, one was admitted to be unsubstantial or non-existent, the question examined was whether the order could be allowed to stand in such circumstances. The Supreme Court in **Shibban Lal v. State of Uttar Pradesh**[2] observed:

> "To say that the other ground, which still remains, quite sufficient to sustain the order, would be to substitute an objective judicial test for the subjective decision of the executive authority which is against the legislative policy underlying the statute. In such cases, we think, the position would be the same as if one of these two grounds was irrelevant for the purpose of the Act or was wholly illusory and this would vitiate the detention order as a whole."

The Court has consistently held that it is not possible to say if the defective grounds would have or would not have influenced

decision of the detaining authority vide Dwarkadas Bhatia v. State of Jammu and Kashmir (AIR 1957 SC 164). Similar situation would arise if one of the grounds is found to be invalid.

10. We point out that the order which the 1st respondent purported to make in this case under Section 2 (g) of the Act is not one inconformity with the provisions of that Section. Since the detention order was passed under irrelevant grounds, necessarily the same has to be set aside.

11. In the result, the writ petition is allowed and the order of detention is set aside. The detenu shall be set at liberty forthwith. No costs.

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J.

CHELAMESWAR, J

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D. APPA RAO,J

Dated:13-09-2005
Vp

Note:
Issue C.C. by today
(b/o)
vp

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[1] AIR 1943 FC 1

[2] AIR 1954 SC 179